

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 4:20-cv-00957-SDJ

PLAINTIFF STATES' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff States respectfully provide notice to the Court and the Special Master of supplemental authority in connection with its pending Motion to Compel Written Discovery Regarding Destruction of Google Chats (Dkt. 540). In a ruling last week denying Google's renewed motion for judgment as a matter of law or for a new trial after its trial loss against plaintiff Epic Games, Judge Donato rejected Google's arguments that his evidentiary rulings and adverse inference instruction regarding Google's deletion of Chats warranted a new trial. *In re Google Play Store Antitrust Litig.*, No. 20-CV-05671-JD, 2024 WL 3302068 (N.D. Cal. July 3, 2024) ("*Play*"). A copy of the *Play* ruling is attached hereto as Exhibit A.

As Plaintiff States discussed in their Motion, the *Play* court previously granted Rule 37 sanctions against Google, including an adverse inference at trial, for the intentional destruction of relevant Google Chats. Dkt. 540 at 1 (citing *In re Google Play Store Antitrust Litig.*, 664 F. Supp. 3d 981 (N.D. Cal. 2023)). Rejecting Google's bid for a new trial, the *Play* court notes that "the evidence presented at trial added more fuel to this fire" beyond even what the court found in its initial order awarding sanctions. *Play*, 2024 WL 3302068 at *15. Indeed, the court found "an

abundance of pretrial and trial evidence demonstrating an ingrained systemic culture of suppression of relevant evidence within Google.” *Id.* (internal quotation marks omitted). The court specifically noted “the seriousness of these issues” and “the likelihood that they could affect other litigation matters where Google is a party”—acknowledging the connection between the Chat issues in front of it and the Chat issues raised in other pending cases like this one. *Id.* And it called the response from Google’s chief legal officer to the court’s concerns “disappointing.” *Id.* The court stated that the chief legal officer “had not investigated [the deletion of Google Chats] in any way” and that “[m]uch of [the chief legal officer’s] testimony was in direct opposition to the facts established at the prior Google Chat hearing.” *Id.* Ultimately, the court concluded, “Google’s complaints about the inference instruction are wholly misdirected. It has not provided anything close to a good reason to conclude otherwise.” *Id.*

The court also found other efforts by Google to “suppress discovery,” namely a “frankly astonishing abuse of the attorney-client privilege designation” by Google employees up to and including CEO Sundar Pichai. *Id.* at *14.

Plaintiff States alert the Special Master and the Court to this latest decision regarding Google’s destruction of Google Chats for their consideration in deciding the States’ Motion.

DATED: July 9, 2024

Respectfully submitted,

/s/ W. Mark Lanier

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CERTIFICATE OF SERVICE

I certify that on July 9, 2024, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

/s/ Noah S. Heinz
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